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SPECIAL REPORT AND RECOMMENDATIONS MADE BY THE CATEGORY "D" PANEL OF COMMISSIONERS CONCERNING 636 PAKISTANI CLAIMS FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS)

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Introduction

1. This Special Report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission"), submitted pursuant to article 37(e) of the Provisional Rules For Claims Procedure ("the Rules") by the Panel of Commissioners appointed to review individual claims for damages above US$100,000 (i.e., the category "D" Panel). The category "D" Panel has been instructed by the Governing Council to review 639 Pakistani category "A" claims for departure from Iraq or Kuwait in the following special circumstances communicated to the Panel by the Commission's secretariat:

(a) On 5 August 1997, the Permanent Mission of Pakistan in Geneva notified the secretariat that, according to the records maintained by the Government of Pakistan, 639 category "A" (departure from Iraq or Kuwait) claims filed with the Commission were still pending in spite of the fact that the category "A" Panel of Commissioners had finalized its resolution of the claims in that category in October 1996. The Mission provided a list of the 639 claims in question and requested their consideration by the Commission on a priority basis. On 4 March 1998, the Mission renewed its request for a status report on the 639 category "A" claims.

(b) The discrepancy between the category "A" claims' numbers maintained by the Commission and those kept by Pakistan was resolved in August 1998 when it was discovered that the 639 claims in question had actually been filed with the Commission on 10 June 1993 by the Government of Pakistan as part of Lot 823. However, the computer diskette containing the claims submitted by the Government of Pakistan had been mislabelled as a duplicate of Lot 156, which had been previously filed by Pakistan. Since it was assumed that the diskette constituted a duplication of previously registered category "A" claims, the 639 Pakistani claims were never entered into the Commission's category "A" database. Not having been put into the database, the 639 claims were not resolved by the category "A" Panel of Commissioners in any of its six instalments of claims that were approved by the Governing Council between October 1994 and October 1996.

© At the thirty-first session of the Governing Council in March 1999, an information note was provided to the Council by the secretariat explaining that the failure to load the Pakistani diskette into the database meant that claimants for whom the Government of Pakistan had filed claims on time with the Commission have not yet had their claims resolved. In order to rectify the situation it would be necessary for these claims to be put before a Panel of Commissioners so that awards could be issued for the claimants. The Council's guidance was sought as to the manner in which to proceed to resolve the 639 Pakistani category "A" claims.

(d) Having considered the issue and the information note, the Governing Council, at the thirty-first session, accepted the recommendation of its Working Group that, rather than recalling the category "A" Panel of

Commissioners (which ceased functioning in October 1996) to consider the unresolved Pakistani claims, the claims would be put before the category "D" Panel of Commissioners. In reviewing the Pakistani claims, the category "D" Panel of Commissioners, which had deliberative sessions already scheduled for March and April 1999, was instructed by the Governing Council to apply the same processing methodologies (including evidentiary standards) that had been employed by the category "A" Panel of Commissioners. The category "D" Panel was also instructed to submit a special report and recommendations on the Pakistani claims to the Governing Council for consideration at its thirty-second session in June 1999.

2. Subsequent to the thirty-first Governing Council session, it was determined by the secretariat that the mislabelled computer diskette contained only 636 valid claims rather than 639, as indicated in the previously referenced notes of the Permanent Mission of Pakistan. One claim in the diskette was a duplicate of a claim already reported in the fourth instalment of category "A" claims. Two other entries in the diskette concerned non-existent claims.

3. The category "D" Panel notes that the category "A" claims are claims for departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991 and that these claims are among the "most urgent claims" for which the Governing Council's decision on the "Criteria for Expedited Processing of Urgent Claims" (S/AC.26/1999/1) ("decision 1") has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief". Furthermore, the evidentiary standard applicable to category "A" claims is stated in decision 1 and more specifically in article 35(2)(a) of the Provisional Rules for Claims Procedure, which reads:

> "For the payment of fixed amounts in the case of departures, claimants are required to provide simple documentation of the fact and date of departure from Iraq or Kuwait. Documentation of the actual amount of loss will not be required".

4. The expedited procedures prescribed by article 37(a) of the Rules envisaged that in the initial phase the secretariat would check individual claims by matching them, insofar as possible, against the information in its computerized database, and that the results of the database analysis may be cross-checked by the Panel. The next processing phase relates to claims that could not be verified through the computer database. Article 37(b) of the Rules provides that, if the volume of these claims is large, the Panel may check individual claims on the basis of sampling with further verification as circumstances warrant. After resolving close to 350,000 category "A" claims in the first three instalments submitted to it through matching, the category "A" Panel commenced the second phase of verification on the basis of sampling, as envisaged by article 37(b) of the Rules.

5. As it was no longer feasible to revive the computerized programme used by the category "A" Panel in its first three instalments to "match" claimant data with arrival/departure data, the category "D" Panel has confined its analysis of the 636 Pakistani category "A" claims to the sampling procedures employed by the category "A" Panel for its fourth to sixth instalments. The methodology employed by the category "A" Panel of Commissioners in verifying claims by means of sampling was described in that Panel's Report and Recommendations Concerning the Fourth Instalment of Claims for Departure from Iraq or Kuwait (Category "A" Claims) (S/AC.26/1995/4) in paragraphs 45 to 88.

6. While establishing the sampling methodology, the category "A" Panel reviewed the law and practice under international law and national jurisdictions and drew attention to the growing acceptance and application of the principle of adjudication on the basis of sampling and test cases in situations involving a large number of cases or claims raising common issues of law or fact. This has been prompted by the realization of the inappropriateness of the traditional method of individualized adjudication in the case of mass claims and analogous situations. In regard to the application of the sampling methodology, the category "A" Panel observed in its Fourth Instalment Report:

> "Since determining the appropriate sample is a statistical exercise, professional statisticians were consulted for the purpose of calculating the size and defining the composition of the samples. In light of the lack of homogeneity among the claims submissions from and the processing used by the various submitting countries and international organizations it was decided that the sampling operation should be country-specific (rather than across all category "A" claims) so as to increase the homogeneity of the population from which the samples were to be chosen, and thereby to improve the results of the extrapolation." (Paragraph 46.)

I. BACKGROUND TO PAKISTANI CATEGORY "A" CLAIMS

7. 32,247 category "A" departure claims from Pakistan were entered into the Commission's database. Of that figure, 31,836 were determined to be successful by the category "A" Panel of Commissioners and the corresponding claimants were awarded a total of US$124,992,500 in compensation by the Governing Council. With respect to the 411 Pakistani category "A" claims for which no compensation was recommended, 410 were found to be duplicates of claims for which compensation had already been awarded. Only one Pakistani category "A" claim was rejected by the category "A" Panel on the basis that the evidence provided demonstrated that the claimant departed from Iraq or Kuwait outside the Commission's relevant jurisdictional period of 2 August 1990 to 2 March 1991.

8. The category "A" Panel of Commissioners' resolution of the Pakistani claims took place over the course of six instalments between 3 June 1994 and

16 October 1996. During the first three instalments of category "A" claims, 7,808 Pakistani claims were approved by means of the category "A" Panel's application of the expedited processing procedures provided by article 37(a) of the Rules that involved verification by "matching" the claims against information in the Commission's computerized database. In the fourth, fifth and sixth instalments of claims, the category "A" Panel approved 24,028 Pakistani claims by verifying individual claims on the basis of sampling, an expedited procedure authorized by article 37(b) of the Rules.

9. The category "D" Panel notes that, had the mislabelled Pakistani claims diskette been entered into the Commission's category "A" database at the time of its filing with the Commission in June 1993, the 636 claims in question would have been subjected to the same expedited claims processing procedures as the 32,247 other Pakistani claims resolved by the category "A" Panel. The task for the category "D" Panel therefore is to satisfy itself that the claims that may be approved by it out of the 636 mislabelled Pakistani category "A" claims share the same claims profile and possess the same types of supporting evidence as the 24,028 other Pakistani claims that were approved by the category "A" Panel prior to October 1996 by application of the sampling methodology.

II. THE CATEGORY "A" PANEL'S ANALYSIS OF THE PAKISTANI DEPARTURE CLAIMS

10. In conducting its sample of the Pakistani category "A" claims, the category "A" Panel of Commissioners examined the types of evidence provided by 290 claimants to prove their presence in Iraq or Kuwait as of 2 August 1990 and their subsequent departure between the time of Iraq's invasion of Kuwait and 2 March 1991. The category "A" claim form listed seven types of documents that the claimants could submit in support of their claims. Claimants were required by the category "A" claim form to indicate the evidentiary items that they attached to their forms. For this purpose, claimants could tick one or more of six boxes representing the following types of evidence: Copy of Official ID issued by Iraq or Kuwait, Used Tickets, Visa/Passport Stamp, Boarding Pass, Receipts/Bills and Other.

11. In addition, the category "A" claim form also requested the Pakistani claimants to attach a statement to their claims including the address of the claimants' last residences and the last places of work in Iraq or Kuwait and to describe how they travelled from Iraq or Kuwait back to Pakistan. Although the category "A" paper claim form did not provide a tick box for claimants to check whether they had included such statements, the category "A" Data Capture System software (DCS) did. Thus, it was possible for the category "A" Panel to analyze the distribution of evidence among the entire Pakistani category "A" claims population, including whether the required additional statement had been submitted, by means of a review of the category "A" claims database. By analyzing the information in the database, the category "A" Panel was able to ascertain how many Pakistani category "A" claimants had attached Official IDs, Used Tickets, the required additional statement, etc. to their claims forms.

12. Evidence of Pakistani category "A" claims that clearly demonstrated departure from Iraq or Kuwait during the jurisdictional period was assessed as "conclusive" by the category "A" Panel of Commissioners. In reviewing its sample of Pakistani category "A' claims, the category "A" Panel of Commissioners determined that 96 per cent of the sample claims conclusively demonstrated their departure from Iraq or Kuwait during the jurisdictional period. More importantly, 99 and 98 per cent of the Pakistani claimants attaching the two most common types of supporting documentation to their claims forms, i.e., Official IDs and Visa/Passport Stamps, were respectively found to have conclusively demonstrated their departure from Iraq or Kuwait. With the percentage of "conclusive" claims within the most common evidentiary types being so high, the category "A" Panel of Commissioners was able to extrapolate the results of the sample to the entire Pakistani category "A" claims population and recommended that all Pakistani claimants in the overall population of claims submitting the same types of "conclusive" evidence would be entitled to compensation. In this way, the category "A" Panel of Commissioners recommended compensation for 24,028 Pakistani category "A" claims.

III. THE PANEL'S REVIEW OF THE 636 PREVIOUSLY UNPROCESSED PAKISTANI CATEGORY "A" CLAIMS

13. In order to determine whether the conclusions reached by the category "A" Panel of Commissioners could be applied to the 636 Pakistani category "A" claims included in the mislabelled diskette, the category "D" Panel needed to assure itself that the 636 claims fit the profile of the overall Pakistani category "A" claims population. In addressing this issue, the category "D" Panel made use of a Summary Report of computerized claims information that the secretariat prepared, which compared the types of evidence provided by the 32,247 Pakistani category "A" claimants as a whole to the 636 specific claims under review. The Summary Report is attached as Annex I to this Report. The category "D" Panel also viewed some of the files in electronic format to be able to test the application of the sample developed by the category "A" Panel. The category "D" Panel's analysis showed that the evidentiary profile of the 636 claims matched very closely that of the entire Pakistani category "A" population. While 75.34 per cent of the total claims population had submitted Official ID evidence, 76.46 per cent of the 636 claims had done likewise. Similarly, 83.02 per cent of the total claims population had provided Visa/Passport Stamp evidence and 81.6 per cent of the 636 claimants had done the same. Finally, while 99.28 per cent of the total Pakistani claims population had attached a statement to their claim forms, 100 per cent of the 636 claimants had done so.

14. Accordingly, based on the category "D" Panel's comparative analysis of the evidence attached to the claim forms, the 636 Pakistani category "A" claims under review have been found by the category "D" Panel to accord with the profile of the Pakistani category "A" claims population as a whole. Having reached this conclusion, the category "D" Panel has determined that the 636 Pakistani category "A" claimants are entitled to the same

recommendation as to compensation made by the category "A" Panel of Commissioners with regard to the overall population of category "A" claims.

IV. RECOMMENDED COMPENSATION FOR THE 636 PAKISTANI CATEGORY "A" CLAIMS

15. Pursuant to article 37(e) of the Rules, the category "D" Panel presents its recommendations regarding the 636 Pakistani category "A" claims. Having considered the results of the analysis of the verification of the category "A" claims through sampling and having reviewed the evidence submitted to it in support of the claims at issue, the category "D" Panel recommends the payment of compensation for the 636 claims submitted by the Government of Pakistan on 10 June 1993 in Lot 823 in the total amount of US$2,558,500.

16. On the basis of the considerations formulated in Part IV, section C, sub-section 3. of the first report of the category "A" Panel, the category "D" Panel recommends that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council's decision on "Awards of Interest" (S/AC.26/1992/16) ("decision 16"). The category "D" Panel also adopts the view expressed by the category "A" Panel that the phrase "the date the loss occurred" in decision 16 should be interpreted to be a single date for all category "A" claims and that the date of invasion, 2 August 1990, should serve as the fixed date.

Geneva, 27 April 1999

(Signed) R.K.P Shankardass
Chairman

(Signed) H.M. Joko Smart
Commissioner

(Signed) M.C. Pryles
Commissioner

Annex I

SUMMARY REPORT
PAKISTAN
(Mislabelled claims)

1. Submitting entity: Pakistan

2. Total No. of claims (excluding 636 claims): 31,813

3. Total No. of mislabelled claims: 636

Type of evidence claims	Percentage and total per type in claims population	Percentage and total per type in 636 mislabelled claims
I. Official ID	75.34% (23,968)	76.42% (486)
II. Used Tickets	3.90% (1,242)	1.42% (9)
III. Visa/Passport Stamp	83.02% (26,410)	81.60% (519)
IV. Boarding Pass	2.96% (942)	0.63% (4)
V. Receipts/Bills	2.86% (909)	0.47% (3)
VI. Other	17.73% (5,640)	5.19% (33)
VII. Statement	99.28% (31,584)	100.00% (636)